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ENTERED  
Office of Proceedings

March 23, 2011

MAR 22 2011

Part of  
Public Record

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

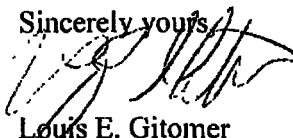
RE: Finance Docket No. 35475, *Port of Ivory, LLC—Operation  
Exemption-Line of Railroad in Tulare County, CAL.*

Dear Ms. Brown:

Enclosed for e-filing by San Joaquin Valley Railroad Company ("SJVR") is a motion for protective order to allow SJVR to seek discovery from Port of Ivory ("PORT"). PORT does not object to the protective order. SJVR seeks expedited handling of this motion because of the limited timeframe for motions to stay.

If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer  
Attorney for San Joaquin Valley Railroad Company

Enclosures

THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35475

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PORT OF IVORY, LLC—OPERATION EXEMPTION—LINE OF RAILROAD IN TULARE  
COUNTY, CAL.

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MOTION FOR PROTECTIVE ORDER

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Attorney for San Joaquin Valley Railroad  
Company

Dated: March 23, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35475

PORT OF IVORY, LLC—OPERATION EXEMPTION—LINE OF RAILROAD IN TULARE  
COUNTY, CAL.

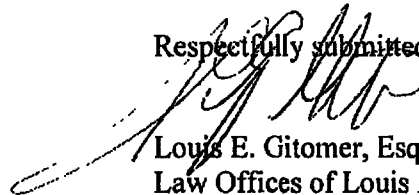
MOTION FOR PROTECTIVE ORDER

Pursuant to 49 C.F.R. § 1104.14(b), San Joaquin Valley Railroad Company ("SJVR") hereby moves for a protective order in the form set forth in Appendix A hereto. The proposed protective order is necessary to allow for the exchange of discovery information between Port of Ivory, LLC ("PORT") and SJVR.

Accordingly, SJVR requests that a Protective Order be entered that will apply to the documents deemed confidential and disclosed during discovery, in the form set forth in Appendix A to this Motion, including the form of confidential undertaking that accompanies it.

Because a petition to stay this proceeding must be filed by March 25, 2011, SJVR requests that the Board expedite this motion.

Respectfully submitted,



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Attorney for San Joaquin Valley Railroad  
Company

Dated: March 23, 2011

## **APPENDIX A**

### **PROTECTIVE ORDER**

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost workpapers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts with shippers, confidential financial and cost data, and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" in accordance with paragraphs 3 or 4 of this Protective Order, and any Confidential Information contained in such materials.

(d) These "Proceedings" consist of STB Finance Docket No. 34575, any related proceedings before the Surface Transportation Board and any judicial review, proceedings arising from STB Finance Docket No. 34575 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a discovery request or response, of a transcript of a deposition or hearing, or of a pleading or other paper filed or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL". Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraph 2 of this Protective Order.

3. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order and providing a copy of the confidentiality undertaking to counsel for Temple.

4. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenge(s).

5. Designated Material may not be used for any purposes other than these Proceedings, including without limitation any business, commercial, strategic, or competitive purpose.

6. Any party who received Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

7. No party may include Designated Material in any pleading, brief, discovery request or response, or other documents submitted to the Board, unless the pleadings or other document is submitted under seal; in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

8. No party may include Designated Material in any pleadings, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding, or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

9. No party may present or otherwise use any Designated Material at a Board hearing these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

10. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 10 of this Protective Order.

11. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1, 2, or 3 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related

proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

12. All parties executing a CONFIDENTIAL undertaking shall serve a copy upon the party providing the information.

13. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

14. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

**EXHIBIT A**  
**UNDERTAKING**  
**CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, have read the Protective Order served on \_\_\_\_\_, governing the production of confidential documents in STB Finance Docket No. 35475, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any confidential data or information obtained pursuant to this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purposes other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35475 or any judicial review proceeding arising therefrom. I further agree not to disclose any confidential data or information obtained under this Protective Order to any person who is not also bound by the terms of the Order and has not executed an Undertaking in the form hereof. At the conclusion of this proceeding and any judicial review proceeding arising therefrom, I will promptly destroy any copies of such designated documents obtained or made by me or by any outside counsel or outside consultants working with me, provided, however, that outside counsel (but not outside consultants) may retain file copies of its work product and of pleadings and evidence filed with the Board, and in-house counsel may retain file copies of all pleadings and evidence containing confidential material it received during the course of this proceeding. I further understand that a party may retain its own confidential material.

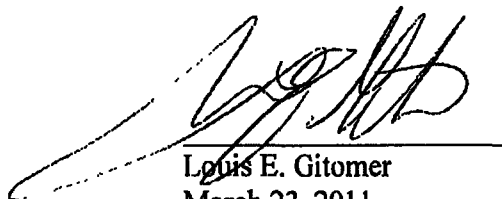
I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

\_\_\_\_\_  
Dated: \_\_\_\_\_

# CERTIFICATE OF SERVICE

I certify that I have this day served a copy of this Motion for Protective Order upon the following representative of the Port of Ivory, LLC by electronic delivery.

John D. Heffner, Esq.  
Law Offices of John D. Heffner, PLLC  
1750 K Street, N.W.  
Suite 200  
Washington, DC 20006



Louis E. Gitomer  
March 23, 2011